Filed 11/20/08 In re C.G. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re C.G., a Person Coming Under the Juvenile Court Law.	B205225 (Los Angeles County Super. Ct. No. JJ15590)
THE PEOPLE, Plaintiff and Respondent, v. C.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, S. Robert Ambrose, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed with directions.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters, Supervising Deputy Attorney General, and David Zarmi, Deputy Attorney General, for Plaintiff and Respondent.

C.G. appeals from the order of wardship entered following a finding that she committed robbery. The minor was placed home on probation and contends that the robbery finding was not supported by the evidence and should not be considered a conviction under the "Three Strikes" law and that it was improper to order a maximum period of confinement. We affirm the order of wardship and order the juvenile court to strike reference to the minor's the maximum period of confinement.

BACKGROUND

On the afternoon of October 15, 2007, O.B. was buying a ticket at the Metro station on South Figueroa in Los Angeles when was she was approached by three youths: the minor, B.F., and F.[1] One of the three stopped in front of O.B. and the other two stopped on either side of O.B, who was holding her wallet in her hand. One of the youths asked O.B. if she had a quarter. As O.B. answered that she did not know, one of the three took O.B.'s wallet out of her hand and removed money from the wallet. O.B., who did not resist because she was afraid, asked the three why they did not get jobs and have their own money. The three responded by laughing and giving O.B.'s wallet back to her. O.B. said that she would call the police, and the three ran to a red Toyota truck and drove off.

O.B. reported the incident to authorities at the Metro station. She described the perpetrators as three males, one with a red bandana, who had fled in a Toyota truck. A Toyota truck with three youths inside, one wearing a red bandana, was later stopped by a sheriff's deputy. The deputy initially thought all three were males, but soon determined that two (the minor and F.) were females. O.B. was brought to where the truck had been stopped, at which point she first learned that two of the three youths were female. (No evidence was received regarding any field identification by O.B.) At the adjudication, O.B. identified the minor and B.F. as two of the three perpetrators, although she could not specify which of the three had spoken to her or had taken her wallet.

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[1] B.F. was adjudicated as a co-minor but is not a party to this appeal. F. was identified only by surname.

A sheriff's detective testified that he later interviewed the minor and B.F. at the police station. The detective initially thought the minor, who was wearing the red bandana, was a male. The minor told the detective that she was waiting for B.F., and F. "grabbed the girl's [O.B.'s] money, and then they ran back and got in a red pickup truck and left." According to the minor, "she wasn't involved and [F.] was the one who conducted the robbery . . . ." In B.F.'s statement, he claimed that the money had been taken by the minor and F.

The minor did not present any evidence on her behalf.

DISCUSSION

1. Sufficiency of the Evidence

The minor contends the evidence was insufficient to support the finding that she committed robbery either as the actual perpetrator or as an aider and abettor: as the perpetrator because O.B.'s identification of her was "shaky" and O.B. did not know which of the three perpetrators had made comments to her or had taken her wallet; and as an aider and abettor because there was no evidence that the minor said or did anything during the incident or knew that O.B.'s wallet would be taken. The contention is without merit.

We analyze the minor's contention by viewing the evidence in the light most favorable to the adverse finding. (*People v. Stanley* (1995) 10 Cal.4th 764, 792–793.) Focusing on the aiding and abetting theory, the evidence established the minor, B.F., and F. approached O.B. at the same time and surrounded her on three sides. O.B.'s wallet was taken by one of the three, all of whom then fled the scene in each other's company. The minor later admitted that she had been present.

"[F]actors for determining aiding and abetting of a robbery include presence at the scene of the crime, companionship, and conduct before and after the crime, including flight. [Citation.]" (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294.) Considering these factors here, we conclude the evidence was such that a rational trier of fact could conclude beyond a reasonable doubt that the minor had committed a robbery. (See *People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

2. "Three Strikes" Law Determination

The minor contends that the finding of her having committed robbery, which was the result of a juvenile adjudication, should not be considered a strike under the "Three Strikes" law. But nothing about the adjudication purports to determine how it should be viewed in the future. Accordingly, the minor's contention is not cognizable on appeal and must be rejected. (Pen. Code, § 1237; *People v. Weaver* (2007) 149 Cal.App.4th 1301, 1336.)

3. Maximum Period of Confinement

The minute order of January 10, 2008, reflects in item No. 28 that the "[m]inor may not be held in physical confinement for a period to exceed five years."[2] The minor contends that this provision should be stricken. We agree.

Where, as here, "a juvenile ward is allowed to remain in his parents' custody, there is no physical confinement and therefore no need to set a maximum term of confinement. Consequently, the maximum term of confinement . . . is of no legal effect." (*In re Ali A.* (2006) 139 Cal.App.4th 569, 571.)

The Attorney General concedes that *Ali A.* controls but argues that there is no need to strike the offending provision because it cannot prejudice the minor. We conclude it is better practice to order that the invalid provision be stricken. Accordingly, we shall do so.

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[2] The clerk's transcript on appeal erroneously contains the January 10, 2008 minute order of co-minor B.F. We have taken judicial notice from the juvenile court file of the minute order of that date pertaining to C.G.

DISPOSITION

The order of wardship is affirmed. The juvenile court is ordered to strike the portion of the January 10, 2008 minute order stating in item No. 28 that the "[m]inor may not be held in physical confinement for a period to exceed five years."

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

DUNNING, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.